

investigating officer's comments, if any.

(c) If the Administrative Law Judge grants the petition, the hearing is reopened to allow the offer of the new evidence described in the petition.

(d) If the Commandant grants the petition, the case is remanded to the Administrative Law Judge with directions to reopen the hearing.

(e) When the petition is granted, the Administrative Law Judge withdraws the original decision and renders a new one based on the record of the original hearing and the new evidence received.

(f) The petition, the investigating officer's comments, the Administrative Law Judge's or Commandant's decision on the petition, and the additional evidence will be appended to the original hearing record.

**§ 5.607 Appeal from action on petition.**

(a) If the petition to reopen the hearing is denied by the Administrative Law Judge, the respondent may appeal to the Commandant within 30 days from the date of service of the denial of the petition. The review by the Commandant on this appeal will be limited to the issues raised by the petition. Other grounds on appeal must be in accordance with subpart J of this part.

(b) If the petition to reopen the hearing is granted and a previous finding of *proved* is affirmed by the Administrative Law Judge, the respondent may appeal the decision as provided for in subpart J of this part.

**Subpart J—Appeals**

**§ 5.701 Appeals in general.**

(a) A respondent against whom a finding of *proved* has been rendered may appeal such decision to the Commandant.

(b) The hearing transcript, together with all papers and exhibits filed, shall constitute the record for decision on appeal. The only matters which will be considered by the Commandant on the appeal are:

- (1) Rulings on motions or objections which were not waived during the proceedings;
- (2) Clear errors on the record;
- (3) Jurisdictional questions.

(c) In the preparation of an appeal, the investigating officer's and the Administrative Law Judge's assistance to the appellant will extend only to the point of providing information as to the applicable regulations.

(d) If the respondent requests a copy of the transcript in the notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

**§ 5.703 Procedures for appeal.**

(a) An appeal may be taken only by filing a written notice of appeal within 30 days after service of the complete written decision. This notice of appeal must be filed with the Administrative Law Judge who heard the case or with any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) The notice of appeal must:

- (1) Be typewritten or written legibly;
  - (2) Be addressed to the Commandant;
- and

(3) Set forth the name of the appellant, the number and description of the license, certificate and/or document involved, and the name of the Administrative Law Judge who heard the case.

(c) The completed appeal must be submitted to the Commandant, U.S. Coast Guard (G-MOA), 2100 2nd St. SW., Washington, DC, 20593 within sixty days after service of the complete written decision, or if a transcript was requested, within 60 days after receipt of the transcript. After this time has elapsed, anything received will not be considered as a part of the appeal record unless an extension of time has been granted in writing by the Commandant and the extended time limit has been met.

(d) The appeal must contain a brief or memorandum setting forth legal and other authorities relied upon. All grounds for appeal or exceptions to the Administrative Law Judge's decision must be described with particularity.

(e) No appeal will be accepted in the case of a revocation or outright suspension if the respondent has not complied

with the order of the Administrative Law Judge to deposit the license or document with the Coast Guard.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 95-072, 60 FR 50459, Sept. 29, 1995; CGD 96-041, 61 FR 50726, Sept. 27, 1996]

#### **§ 5.705 Action on appeal.**

(a) The Commandant may affirm, reverse, alter, or modify the decision of the Administrative Law Judge, or may remand the case for further proceedings. The Decision of the Commandant on Appeal is the final agency action in the absence of a remand.

(b) Failure to file a brief containing grounds and justification for relief sought on appeal of the Administrative Law Judge's decision will result in either:

(1) Termination of the case by written notice to the appellant or appellant's counsel that the decision of the Administrative Law Judge constitutes the final agency action on the merits of the case; or

(2) Consideration of the appeal on the merits of the case and publication of the Commandant's decision without prior notice to the appellant or appellant's counsel. This will only be done when some clear error appears in the record or when the case presents some novel policy consideration.

#### **§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary license, certificate, or document.**

(a) A person who has appealed from a decision suspending outright or revoking a license, certificate or document, except for revocation resulting from an offense enumerated in § 5.59, may file a written request for a temporary license, certificate or document. This request must be submitted to the Administrative Law Judge who presided over the case, or to any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) Action on the request is taken by the Administrative Law Judge unless the hearing transcript has been forwarded to the Commandant, in which case, the request is forwarded to the Commandant for final action.

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary document or license may be denied for that reason alone.

(d) All temporary documents will provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary document expires before the Commandant's decision is rendered, it may be renewed, if authorized by the Commandant.

(e) If the request for a temporary document is denied by the Administrative Law Judge, the individual may appeal the denial, in writing, to the Commandant within 30 days after notification of such denial. Any decision by the Commandant to deny is the final agency action.

(f) Copies of the temporary documents issued become a part of the record on appeal.

#### **§ 5.709 Appeal cases remanded for further proceedings.**

(a) When the Commandant renders a decision remanding a case for further proceedings, the remand is directed to the Administrative Law Judge. If a reopening of the former hearing or a new hearing is necessary, the Administrative Law Judge notifies the investigating officer and the respondent and sets a date for the hearing.

(b) If the hearing is reopened, the evidence in the prior hearing shall be evaluated together with the new evidence submitted.

(c) In a new hearing, the evidence in the prior hearing may be used for purposes of impeachment. Evidence in the prior hearing may be stipulated as a part of the record of the new hearing.

(d) The Administrative Law Judge renders either an entirely new decision or a decision incorporating by reference the original decision, as appropriate.